

IN THE DISTRICT COURT OF APPEALS
THIRD DISTRICT OF TEXAS
AUSTIN, TEXAS

FILED IN
3rd COURT OF APPEALS
AUSTIN, TEXAS

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NO. 03-18-00650-CV

JEFFREY D. KYLE
Clerk

ALEX E. JONES, INFOWARS, LLC, FREE SPEECH SYSTEMS, LLC
AND OWEN SHROYER

APPELLANTS

v.

NEIL HESLIN

APPELLEE

ON APPEAL FROM CAUSE NUMBER D-1-GN-18-001835
53RD DISTRICT COURT, TRAVIS COUNTY, TEXAS
HON. SCOTT JENKINS PRESIDING

APPELLANTS' MOTION TO ENLARGE LENGTH OF BRIEF

Alex E. Jones, Infowars, LLC, Free Speech Systems, LLC, and Owen Shroyer, appellants, move pursuant to T.R.App.P. Rule 9.4(i)(4) for leave to increase the word count for their initial brief by 2,500 words to 17,500 words and to increase the aggregate total from 22,500 to 25,000 words. In support of the requested relief, appellants state:

1. In the trial court appellees filed 8 affidavits totaling 61 pages,

excluding exhibits to the affidavits.

2. Because of the volume of affidavits and attachments filed by appellee, appellants filed numerous objections to these filings.

3. Appellee's affidavits were filed on the afternoon of August 27, 2018, leaving appellants only three days to review them and prepare objections.

4. Though appellants twice formally requested that the trial court rule on the objections, it did not do so, thus now requiring that these objections be briefed for this Court.

5. The trial court based its ruling on something in the record. Tex. Civ. Prac. & Rem. Code §27.006(a) allows the trial court to consider the pleadings and affidavits on file. There is no means by which to determine what weight, if any, was given to which part of which of appellee's affidavits. Hence in order to not risk waiver of important and legally valid objections, appellants must adequately brief them.

6. This Court is not required to search the record to rule on the objections. Objections to TCPA affidavits must be addressed in the briefs. See *MVS Int'l Corp. v. International Advertising Solutions, LLC*, 545 S.W.3d 180, 191 (Tex. App. - El Paso 2017, no pet.) Because the appellants' objections must be addressed in their brief, and because of the number of objections, the rule-specified word limit is inadequate.

7. This request is made, in part, because counsel for Appellee only last week obtained an enlargement of words for his Appellee's brief in *Alex E. Jones, Infowars, LLC and Free Speech Systems, LLC v. Leonard Pozner and Veronique DeLaRosa*, Case No. 03-18-00603-CV, Third District Court of Appeals.¹ In obtaining this relief, counsel argued that he required the extra words to address the briefing on objections by the appellants in that case. Anticipating that counsel will make the same request in this case to enlarge the word limit to allow for full briefing on the objections urged but not ruled on by the trial court, Appellants now seek this enlargement in order for them to fully brief the objections in due order of briefing.

8. Pursuant to Third Court of Appeals Local Rule 55, Appellants' Motion to Expedite the Court's ruling on this Motion to Enlarge Length of Brief is attached hereto as Exhibit B.

Based on the foregoing, Appellants request that the word count for their opening brief be enlarged to 17,500 words and that the total page limit be increased to 25,000 words so that appellants' reply brief word limit shall remain at 7,500 words. As set forth in their Motion to Expedite, Appellants further request that this Court dispose of this motion on an expedited basis prior to the ten days required by Tex.R.App.P. Rule 10.3(a).

¹ Attached as Exhibit A is a true and correct copy of Appellee's motion in the *Pozner-DeLaRosa* case. This motion was granted by this court on November 27, 2018.

RESPECTFULLY SUBMITTED,
GLAST, PHILLIPS & MURRAY, P.C.

/s/ Mark C. Enoch
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ATTORNEY FOR APPELLANTS

CERTIFICATE OF CONFERENCE

I contacted Mark Bankston, lead counsel for appellee, by email on the afternoon of December 3, 2018 requesting his agreement to the enlargement of word-count requested herein. As of the time of filing this motion, Mr. Bankston has not indicated whether he opposes or does not oppose. Hence this motion is filed as opposed.

/s/ Mark C. Enoch
Mark C. Enoch

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of December, 2018, the foregoing was sent via efiletxcourts.gov's e-service system to the following:

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/s/ Mark C. Enoch
Mark C. Enoch

IN THE DISTRICT COURT OF APPEALS
THIRD DISTRICT OF TEXAS
AUSTIN, TEXAS

NO. 03-18-00603-CV

ALEX E. JONES, INFOWARS, LLC, AND FREE SPEECH SYSTEMS, LLC,
APPELLANTS

v.

LEONARD POZNER AND VERONIQUE DE LA ROSA
APPELLEE

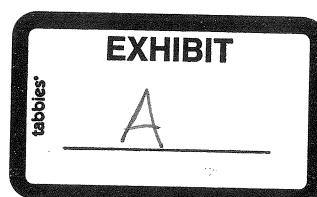
ON APPEAL FROM CAUSE NUMBER D-1-GN-18-001842
53rd DISTRICT COURT, TRAVIS COUNTY, TEXAS
HON. SCOTT JENKINGS PRESIDING

APPELLEES' MOTION FOR ENLARGEMENT OF BRIEF WORD COUNT

Appellees Leonard Pozner and Veronique De La Rosa move the Court for an enlargement of the word count for their response brief by 5,000 words.

INTRODUCTION

Appellees sued Alex Jones, InfoWars, LLC, and Free Speech Systems (collectively, "InfoWars") due to their false allegations about the Sandy Hook Elementary School shooting. InfoWars brought a motion under the Texas Citizen's Participation Act, challenging Appellees' defamation claims. The Honorable Scott Jenkins of the 53rd District Court denied the motion. This appeal followed. InfoWars filed its opening brief on November 14, 2018.



Appellees face a unique challenge in this appeal. For InfoWars, opposing the trial court's order is a fairly straight-forward process of raising complaints. For Appellees, they must produce *prima facie* evidence on each element of their claims in a lawsuit spanning a five-year history of on-going harassment. While a respondent to a TCPA motion always faces the more difficult challenge, the imbalance is particularly extreme here, where the evidence supporting Appellees' claims implicates twenty hour-long videos produced by Mr. Jones and InfoWars.

In order to meet their burden, Appellees will need to quote extensively from this five-year history of video statements. Given InfoWars' signature style, which could be charitably described as "less than focused," each of these quotations must be longer than average to communicate the point being made. While Appellants' argument is not complex, the challenge of responding is complicated by the nature of the source material. Nonetheless, Appellees had anticipated that even with this challenge, they would be able to produce a brief within the word count limit, though not without dogged effort. However, two circumstances discussed below have aggravated the situation.

ARGUMENT

I. InfoWars' Brief Evades the Word Count Limit by Presenting Voluminous Citations to Record Objections Without Detail or Argument.

The first problem concerns the manner in which InfoWars presented an excessive number of evidentiary errors for review. Before filing its brief, InfoWars sought and received an extension of time. Yet a few days before its extended due date,

InfoWars filed an “emergency” Motion to Enlarge Brief and Motion to Expedite. InfoWars claimed they needed to file an oversized brief because they intended to have this Court consider over 1,000 evidentiary objections. [See Appellants’ Motion to Enlarge Brief, “Exhibit A”]. Appellees argued that Appellants’ “scorched earth” tactics were inappropriate and excessive. Appellees believed that InfoWars should comply with the word limit, especially since InfoWars does not carry the burden on the Motion. Appellees argued that if InfoWars had wanted to make extended arguments over its evidentiary objections, it should have timely sought relief instead of an eleventh-hour motion.

This Court did not grant the enlargement, yet InfoWars simply found a way to evade the limit. Instead of actually briefing its objections, InfoWars abandoned all pretense at prose and simply inserted bullet point citations to its written objections filed in the trial court, providing no other details. Consider this “argument” from page 68 of InfoWars’ brief:

- “Background Knowledge . . .” (CR:897-898), “Infowars . . . (CR:898-908), “Opinions” (CR:908-921), “Conclusion” (CR:921); objections – conclusory, no personal knowledge, speculative (CR:1408-1431).

This single bullet point advances objections to 25 pages of undelineated testimony, and it incorporates arguments from 23 pages of InfoWars’ written

objections filed in the trial court. InfoWars' brief includes eight pages of these bullet points. [See Appellant's Br. 67-75].

The abandonment of plain English or any pretense at discussion was a clear attempt by InfoWars to evade word count limitations while still advancing the same intended arguments.¹ Appellees face an onerous challenge in responding to this fusillade of objections, not to mention the remainder of InfoWars' dense, scattershot brief.

InfoWars' brief was especially surprising in that it argued for dismissal of Appellee's claims for intentional infliction of emotional distress (IIED). On the day prior to the hearing of InfoWars' TCPA motion, Appellees filed an Amended Petition adding claims for IIED. [CR 1479; 1500-01]. During the hearing, InfoWars did not

argue that Appellees' claims for IIED were ripe for dismissal, and the claims were ignored during the hearing. The day following the hearing, InfoWars filed a Second Motion to Dismiss. [CR 1523]. That motion sought to dismiss the IIED claims. [CR 1524]. Two weeks later, InfoWars set the motion for a hearing. [CR 2222]. That motion was waiting to be heard when InfoWars filed its appeal. Nonetheless, InfoWars now argues that the trial court already ruled on the IIED claims, and that they are ripe for consideration by this Court.

Appellees do not agree with InfoWars' interpretation, but clearly Appellees must respond in vigorous defense of their IIED claims. However, this poses a significant challenge since InfoWars devoted just over a page of its brief to this issue, but it will require appellee to defend the entire cause of action in detail. Appellees cannot risk devoting such a disproportionately small part of their brief to IIED. At the same time, Appellees must also address the disproportionately large volume of arguments on defamation. Fully defending their IIED claims would require the Appellees to ignore a great many complaints raised about the defamation claims. InfoWars attack on Appellees' IIED claim illustrates the imbalance between the parties. InfoWars is able to put the IIED claims at issue with a page of briefing, but Appellees cannot respond in kind.

PRAYER

Given the nature of the case and the limited proceedings, Appellees were prepared to submit a brief within the word count limit. Yet InfoWars' brief presents

challenges that force Appellees to seek relief, including excessive, inadequately briefed points of error, as well as raising an additional motion to dismiss for the first time. Appellees respectfully submit that this case has important public implications, and Appellees only seek this extension to adequately respond. Moreover, Appellees – unlike InfoWars – have made a timely, immediate request to the Court rather than an eleventh-hour motion after the expiration of a time extension. For these reasons, Appellees pray this Court grants their Motion and enlarges the word count by 5,000 words, to a total of 20,000 words.

Respectfully submitted,

KASTER LYNCH FARRAR & BALL, LLP



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CERTIFICATE OF CONFERENCE

On November 15, 2018, I conferred with counsel for the Appellants, Mark Enoch, who confirmed that he is opposed to an extension of the word count limit.



MARK D. BANKSTON

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2018 the forgoing document was served upon all counsel of record via electronic service, as follows.

Via E-Service: fly63rc@verizon.net

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MARK D. BANKSTON

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NO. 03-18-00650-CV

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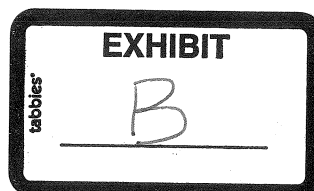
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Appellants' brief is due December 6, 2018. In order to meet this briefing deadline it is necessary for the Court to rule on Appellants' Motion to Enlarge on an expedited basis.

Based on the foregoing, appellants request that this Court dispose of their Motion to Enlarge on an expedited basis prior to the ten days required by Tex.R.App.P. Rule 10.3(a).

RESPECTFULLY SUBMITTED,

GLAST, PHILLIPS & MURRAY, P.C.

/s/ Mark C. Enoch

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